

COPY
in Opinion

744

December 19, 1955

NEW HAMPSHIRE LAW LIBRARY

SEP 22 1998

CONCORD, N.H.

Mr. Leon O. Gerry, Deputy Commissioner
Bank Commission
State House
Concord, New Hampshire

Dear Mr. Gerry:

You have asked whether the incorporation of a guaranty savings bank comes within the jurisdiction of the Board of Trust Company Incorporation.

The subject matter is dealt with in RSA 392 and by section 1 of said chapter the composition of the Board is set out.

As originally enacted (Laws of 1915, chapter 109) the Bank Commissioner and the Attorney General constituted a board "for the incorporation of trust companies, loan and trust companies, loan and banking companies and all other corporations of a similar character, . . ."

By Laws of 1925, chapter 143, the report of the Commissioner to revise the public laws was amended by striking out the words "the bank commissioner and the attorney general" and substituting therefor the following: the bank commissioner, the deputy bank commissioner and the attorney general; so that the section as amended reads as at present.

In 1915, in Woodbury's Appeal, 78 N.H. 50, 51, our Supreme Court construed Laws of 1915, chapter 109, sections 1 through 33, as having reference to the organization and management of state banks as distinguished from the regulation of national banks.

COPY

December 19, 1955

Leon O. Gerry -- 2.

At page 52 of said decision, the Court pointed out "after section 1 of the act, which provides for a Board of Incorporation of State, trust and banking companies, a reference is made in most of the next 32 sections to 'such corporations' meaning those designated in section 1; . . ."

Subsequent revisions of our statutes have shuffled the succeeding original thirty-three sections of chapter 109 of the Laws of 1915 throughout our present banking law, at least so far as sections 10, 13, 15, 17, 19, 20, 25, 27, 28, 29, 30, 31, 32 and 33 are concerned.

The powers of "such corporation" are defined in RSA 392:33, 34 and 35.

It is clear that banking corporations having trust powers are "such corporation" so as to bring its incorporation within your jurisdiction.

As to mutual savings banks or guaranty savings banks it is my opinion that since 1925 their approval by the Board of Trust Company Incorporation is unnecessary.

In this connection, it should be noted that by RSA 384:24, 25 and 26, private banking by individuals, partnerships, associations, or corporations, except national banks and such corporations as are thereto empowered by their charters, granted by this state, are not permitted to conduct banking businesses. See also, RSA 293:1.

Accordingly, it is my opinion that the establishment of a mutual savings bank or guaranty savings bank may only be by legislative charter under existing law.

Very truly yours,

George F. Nelson
Assistant Attorney General

GFH:L